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Promotion and protection of human rights: implementation of human rights instruments

The rule of law at the national and international levels

Letter dated 13 February 2013 from the Permanent Representative of the Plurinational State of Bolivia to the United Nations addressed to the Secretary-General

I am writing to bring to your attention the fact that, on 25 January 2013, while conducting an operation to counter smuggling in the border area with Chile involving vehicles without the requisite documents, three conscripts of the Bolivian army — Alex Choque Quispe, age 21, Augusto Cárdenas García, age 19, and José Luis Fernández Choque, age 18 — were detained by the Chilean authorities. These Bolivian citizens are conscripts who, in fulfilment of a constitutional duty, were serving their one-year mandatory military service.

The report received from the General Command of the Bolivian Army indicates that a Bolivian military patrol identified seven vehicles without the requisite documents in the Challumajahuira area of Bolivia, also known as the La Queka pass, and managed to detain two of the vehicles, while five escaped; the alleged smugglers later abandoned one of the vehicles. The seized vehicles were left in the custody of the now detained military personnel. It should be noted that, in the region in question, the border between the two States is unmarked, and that the Bolivian personnel carried out all of the actions described in what they believed to be Bolivian territory.

After being caught, the alleged smugglers alerted the Chilean National Police (Carabineros de Chile). Officers immediately arrived on the scene and detained the soldiers, who offered no resistance and were later taken to Iquique by helicopter.

According to the above-mentioned report, the alleged smugglers, who had entered Bolivian territory with vehicles lacking the requisite documents and presumably stolen, admitted to the Chilean authorities (the carabineros) that they regularly engage in such criminal activity. Nevertheless, they received the full support of the Chilean police in the face of the Bolivian soldiers' actions, and were not arrested. In fact, the seized vehicle was returned to them solely on the basis of their word, without any proof of their ownership rights being provided.

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These actions constitute a clear violation of international treaties on international legal cooperation, in particular international instruments on countering transnational organized crime, the Inter-American Convention on Mutual Assistance in Criminal Matters, which was ratified by both countries, and the Agreement between Bolivia and Chile on Cooperation between the Bolivian National Police and the Carabineros de Chile, signed on 21 November 2008, which was also ratified by both countries. Article 1 of the Agreement calls for mutual cooperation with the specific goal of preventing and controlling criminal activity occurring in the two countries' territories.

When they detained the Bolivian conscripts, the Chilean authorities impeded or ignored those individuals' right to timely consular assistance, thereby violating the Vienna Convention on Consular Relations. In that regard, article 36 of the Convention calls for free and unrestricted communication between nationals of a State and their consular post, in particular in the case of arrest, detention or custody pending trial. It has been clearly established that, during the events in question, the soldiers did not have immediate and direct access to Bolivian consular authorities and that they signed documents in which they allegedly relinquished their right to such assistance, despite the extensive international legal precedents that regard such assistance as an inalienable right.

In these circumstances, prosecution and potential sentencing for the offences of unlawful bearing of firearms and illegal entry into the country do not apply to military personnel, as the scope of those offences is limited to private individuals (civilians). In that regard, it should be reiterated that the Bolivian soldiers are members of the country's armed forces and were carrying out their military duties in a counter-smuggling operation; they were detained in open violation of the Charter of the United Nations and, in particular, of United Nations General Assembly resolution 2625 (XXV) of 24 October 1970, which sets out the principle that States should settle their international disputes by peaceful means in such a manner that international peace and security are not endangered.

All attempts to free the military personnel have been in vain, as the Chilean authorities placed the Bolivian soldiers, who were carrying a gun as part of their routine counter-smuggling efforts, in pretrial detention. This decision is unfriendly, unneighbourly and disproportionate.

We stress that Bolivian military and police personnel exert their utmost efforts to combat the transnational crime of smuggling within the framework of the Convention on the Suppression of Smuggling, signed in November 1937 and ratified by both States, in which smuggling is defined as an international crime to be punished by both countries.

In addition, we underscore that in border areas, citizens of both countries live together in a spirit of peaceful coexistence, as they have the same needs of survival and face the same threats, such as those posed by organized crime. The fight against this scourge should therefore not be viewed as a hostile or aggressive act.

The unilateral action of the Chilean Government violates international law in respect of State immunity and the rules of international jurisdiction. By virtue of the principles of sovereignty and equality, those rules indicate that a State should not grant its domestic courts the jurisdiction to determine whether another State is responsible for alleged international violations.

This reasoning applies to the case at hand, as the three Bolivian soldiers were performing counter-smuggling functions mandated by the Bolivian State, which is the owner of the gun in their possession, having provided it for the fulfilment of their military duties. Therefore, the Bolivian soldiers should not under any circumstances be put on trial, as the underlying intention of the Chilean State is to judge the Bolivian State, which is in violation of the principle *par in parem non habet imperium*.

We call on the international community to pay due attention to this regrettable case and to take practical measures in response; we also call on the Republic of Chile to comply with international law and the relevant United Nations resolutions in order to ensure the personal integrity and immediate release of the Bolivian soldiers.

I should be grateful if you would have this letter circulated as a document of the General Assembly under agenda items 69 (a) and 83.

(*Signed*) Sacha **Llorentty Solíz**
Ambassador, Permanent Representative